

By: Coleman

H.B. No. 3690

A BILL TO BE ENTITLED

AN ACT

relating to advance directives.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 166.002, Health and Safety Code, is amended by amending Subdivisions (6) and (9) and adding Subdivision (16) to read as follows:

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033 or a subcommittee of an ethics or medical committee.

(9) "Irreversible condition" means a condition, injury, or illness that:

(A) ~~[that]~~ may be treated but is never cured or eliminated;

(B) ~~[that]~~ leaves a person wholly and permanently unable to care for ~~[or make decisions for the person's own]~~ himself; ~~[and]~~

(C) leaves a person permanently unable to make decisions for himself; and

(D) ~~(C)~~ ~~[that]~~ without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

(16) "Surrogate" means a legal guardian, agent under a medical power of attorney, or a person authorized under Section 166.039 to make a health care decision or treatment decision for an

1 incompetent patient under this chapter.

2 SECTION 2. Section 166.033, Health and Safety Code, is
3 amended to read as follows:

4 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

5 Instructions for completing this document:

6 This is an important legal document known as an Advance
7 Directive. It is designed to help you communicate your wishes about
8 medical treatment at some time in the future when you are unable to
9 make your wishes known because of illness or injury. These wishes
10 are usually based on personal values. In particular, you may want
11 to consider what burdens or hardships of treatment you would be
12 willing to accept for a particular amount of benefit obtained if you
13 were seriously ill.

14 You are encouraged to discuss your values and wishes with
15 your family or chosen spokesperson, as well as your physician. Your
16 physician, other health care provider, or medical institution may
17 provide you with various resources to assist you in completing your
18 advance directive. Brief definitions are listed below and may aid
19 you in your discussions and advance planning. Initial the
20 treatment choices that best reflect your personal preferences.
21 Provide a copy of your directive to your physician, usual hospital,
22 and family or spokesperson. Consider a periodic review of this
23 document. By periodic review, you can best assure that the
24 directive reflects your preferences.

25 In addition to this advance directive, Texas law provides for
26 two other types of directives that can be important during a serious
27 illness. These are the Medical Power of Attorney and the

1 Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss
2 these with your physician, family, hospital representative, or
3 other advisers. You may also wish to complete a directive related
4 to the donation of organs and tissues.

5 DIRECTIVE

6 I, _____, recognize that the best health care is based
7 upon a partnership of trust and communication with my physician. My
8 physician and I will make health care decisions together as long as
9 I am of sound mind and able to make my wishes known. If there comes
10 a time that I am unable to make medical decisions about myself
11 because of illness or injury, I direct that the following treatment
12 preferences be honored:

13 If, in the judgment of my physician, I am suffering with a
14 terminal condition from which I am expected to die within six
15 months, even with available life-sustaining treatment provided in
16 accordance with prevailing standards of medical care:

17 _____ I request that all treatments other than those needed
18 to keep me comfortable be discontinued or withheld and
19 my physician allow me to die as gently as possible; OR
20 _____ I request that I be kept alive in this terminal
21 condition using available life-sustaining treatment.
22 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

23 If, in the judgment of my physician, I am suffering with an
24 irreversible condition so that I cannot care for myself or make
25 decisions for myself and am expected to die without life-sustaining
26 treatment provided in accordance with prevailing standards of care:

27 _____ I request that all treatments other than those needed
28 to keep me comfortable be discontinued or withheld and
29 my physician allow me to die as gently as possible; OR
30 _____ I request that I be kept alive in this irreversible
31 condition using available life-sustaining treatment.
32 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

1 Additional requests: (After discussion with your physician,
2 you may wish to consider listing particular treatments in this
3 space that you do or do not want in specific circumstances, such as
4 artificial nutrition and fluids, intravenous antibiotics, etc. Be
5 sure to state whether you do or do not want the particular
6 treatment.)

7 _____
8 _____
9 _____

10 After signing this directive, if my representative or I elect
11 hospice care, I understand and agree that only those treatments
12 needed to keep me comfortable would be provided and I would not be
13 given available life-sustaining treatments.

14 If I do not have a Medical Power of Attorney, and I am unable
15 to make my wishes known, I designate the following person(s) to make
16 treatment decisions with my physician compatible with my personal
17 values:

- 18 1. _____
19 2. _____

20 (If a Medical Power of Attorney has been executed, then an
21 agent already has been named and you should not list additional
22 names in this document.)

23 If the above persons are not available, or if I have not
24 designated a spokesperson, I understand that a spokesperson will be
25 chosen for me following standards specified in the laws of Texas.
26 If, in the judgment of my physician, my death is imminent within
27 minutes to hours, even with the use of all available medical

1 treatment provided within the prevailing standard of care, I
2 acknowledge that all treatments may be withheld or removed except
3 those needed to maintain my comfort. I understand that under Texas
4 law this directive has no effect if I have been diagnosed as
5 pregnant. This directive will remain in effect until I revoke it.
6 No other person may do so.

7 Signed _____ Date _____ City, County, State of
8 Residence _____

9 Two competent adult witnesses must sign below, acknowledging
10 the signature of the declarant. The witness designated as Witness 1
11 may not be a person designated to make a treatment decision for the
12 patient and may not be related to the patient by blood or marriage.
13 This witness may not be entitled to any part of the estate and may
14 not have a claim against the estate of the patient. This witness
15 may not be the attending physician or an employee of the attending
16 physician. If this witness is an employee of a health care facility
17 in which the patient is being cared for, this witness may not be
18 involved in providing direct patient care to the patient. This
19 witness may not be an officer, director, partner, or business
20 office employee of a health care facility in which the patient is
21 being cared for or of any parent organization of the health care
22 facility.

23 Witness 1 _____ Witness 2 _____

24 Definitions:

25 "Artificial nutrition and hydration" means the provision of
26 nutrients or fluids by a tube inserted in a vein, under the skin in
27 the subcutaneous tissues, or in the stomach (gastrointestinal

1 tract).

2 "Irreversible condition" means a condition, injury, or
3 illness that:

4 (1) [~~that~~] may be treated, but is never cured or
5 eliminated;

6 (2) [~~that~~] leaves a person wholly and permanently
7 unable to care for [~~or make decisions for the person's own~~] himself;
8 [~~and~~]

9 (3) leaves a person permanently unable to make
10 decisions for himself; and

11 (4) [~~(3)~~] [~~that~~] without life-sustaining treatment
12 provided in accordance with the prevailing standard of medical
13 care, is fatal.

14 Explanation: Many serious illnesses such as cancer, failure
15 of major organs (kidney, heart, liver, or lung), and serious brain
16 disease such as Alzheimer's dementia may be considered irreversible
17 early on. There is no cure, but the patient may be kept alive for
18 prolonged periods of time if the patient receives life-sustaining
19 treatments. Late in the course of the same illness, the disease may
20 be considered terminal when, even with treatment, the patient is
21 expected to die. You may wish to consider which burdens of
22 treatment you would be willing to accept in an effort to achieve a
23 particular outcome. This is a very personal decision that you may
24 wish to discuss with your physician, family, or other important
25 persons in your life.

26 "Life-sustaining treatment" means treatment that, based on
27 reasonable medical judgment, sustains the life of a patient and

1 without which the patient will die. The term includes both
2 life-sustaining medications and artificial life support such as
3 mechanical breathing machines, kidney dialysis treatment, and
4 artificial hydration and nutrition. The term does not include the
5 administration of pain management medication, the performance of a
6 medical procedure necessary to provide comfort care, or any other
7 medical care provided to alleviate a patient's pain.

8 "Terminal condition" means an incurable condition caused by
9 injury, disease, or illness that according to reasonable medical
10 judgment will produce death within six months, even with available
11 life-sustaining treatment provided in accordance with the
12 prevailing standard of medical care.

13 Explanation: Many serious illnesses may be considered
14 irreversible early in the course of the illness, but they may not be
15 considered terminal until the disease is fairly advanced. In
16 thinking about terminal illness and its treatment, you again may
17 wish to consider the relative benefits and burdens of treatment and
18 discuss your wishes with your physician, family, or other important
19 persons in your life.

20 SECTION 3. Section 166.039(e), Health and Safety Code, is
21 amended to read as follows:

22 (e) If the patient does not have a legal guardian or agent
23 under a medical power of attorney and a person listed in Subsection
24 (b) is not available, a treatment decision made under Subsection
25 (b) must be concurred in by another physician who is not involved in
26 the treatment of the patient or who is a representative of an ethics
27 or medical committee of the health care facility in which the person

1 is a patient.

2 SECTION 4. Section 166.046, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR
5 TREATMENT DECISION. (a) If an attending physician desires not
6 ~~[refuses]~~ to follow ~~[honor]~~ an incompetent, qualified [a] patient's
7 advance directive or disagrees with a health care or treatment
8 decision made ~~[by or]~~ on behalf of an incompetent, qualified [a]
9 patient, then the physician's request ~~[refusal]~~ shall be considered
10 ~~[reviewed]~~ by an ethics or medical committee in a two-part process
11 as described in this section. ~~[The attending physician may not be a~~
12 ~~member of that committee.]~~ The patient shall be given
13 life-sustaining treatment during this two-part process [the
14 ~~review~~].

15 (1) An advisory consultation between the surrogate and a
16 representative of an ethics or medical committee shall be held and
17 documented in the medical record. The attending physician may not
18 participate as a member of that committee.

19 (2) If a disagreement over a health care or treatment
20 decision persists, then the attending physician may request a
21 meeting with the ethics or medical committee with notice provided
22 pursuant to Subsection (b). The attending physician may not
23 participate as a member of that committee.

24 (b) Upon request for a meeting with the ethics or medical
25 committee described under Subsection (a)(2), the patient's
26 surrogate shall be: ~~[The patient or the person responsible for the~~
27 ~~health care decisions of the individual who has made the decision~~

1 ~~regarding the directive or treatment decision]:~~

2 (1) ~~[may be]~~ given a written description of the ethics
3 or medical committee review process under Section 166.052(b) and
4 may be given any other policies and procedures related to this
5 section adopted by the health care facility;

6 (2) ~~[shall be]~~ informed of the committee review
7 process not less than 60 ~~[48]~~ hours before the meeting with the
8 ethics or medical committee is called to discuss the patient's
9 directive or the surrogate's health care or treatment decision,
10 unless the time period is waived by mutual agreement;

11 (3) informed that the surrogate on request is entitled
12 to receive within 24 hours a copy of the patient's medical record of
13 the patient's current admission to the facility;

14 (3) informed that the surrogate is entitled to receive
15 the assistance of a patient liaison to assist the surrogate
16 throughout the process described in this section;

17 (4) informed that the surrogate may bring one or more
18 persons for support, subject to the ethics or medical committee's
19 policy and ability to accomodate; and

20 ~~[(3) at the time of being so informed, shall be~~
21 ~~provided:~~

22 ~~[(A) a copy of the appropriate statement set~~
23 ~~forth in Section 166.052; and~~

24 ~~[(B) a copy of the registry list of health care~~
25 ~~providers and referral groups that have volunteered their readiness~~
26 ~~to consider accepting transfer or to assist in locating a provider~~
27 ~~willing to accept transfer that is posted on the website maintained~~

1 ~~by the Texas Health Care Information Council under Section~~
2 ~~166.053.]~~

3 (5) [~~(4) is~~] entitled to:

4 (A) attend the meeting and bring other persons
5 for support as provided in Subsection (b) (4) above and;

6 (B) receive a written explanation of the decision
7 reached during the review process.

8 (c) The written explanation required by Subsection
9 (b)(5)(B) [~~(b)(2)(B)~~] must be included in the patient's medical
10 record.

11 (d) If the attending physician or the surrogate [~~, the~~
12 ~~patient, or the person responsible for the health care decisions of~~
13 ~~the individual~~] does not agree with the decision reached during the
14 review process under Subsection (b), the physician shall make a
15 reasonable effort to transfer the patient to a physician who is
16 willing to comply with the directive or the surrogate's health care
17 or treatment decision. The [~~If the patient is a patient in a health~~
18 ~~care facility, the~~] facility's personnel shall assist the physician
19 in arranging the patient's transfer to:

20 (1) another physician;

21 (2) an alternative care setting within that facility;

22 or

23 (3) another facility.

24 (e) If the patient's directive [~~patient~~] or the surrogate
25 [~~person responsible for the health care decisions of the patient~~]
26 is requesting life-sustaining treatment that the attending
27 physician has decided and the review process has affirmed is not

1 appropriate [~~inappropriate~~] treatment, the patient shall be given
2 [~~available~~] life-sustaining treatment of at least the same
3 intensity as that provided at the time the meeting with the ethics
4 or medical committee was held under Subsection (a)(2) while
5 awaiting [~~pending~~] transfer under Subsection (d). The patient also
6 shall be treated in a manner that will enhance pain relief and
7 minimize suffering. The patient is responsible for any costs
8 incurred in transferring the patient to another facility. The
9 attending physician, any other physician responsible for the care
10 of the patient, and the health care facility are not obligated to
11 provide life-sustaining treatment after the 10th day after the
12 written decision required under Subsection (b) is provided to the
13 patient or the surrogate [~~person responsible for the health care~~
14 ~~decisions of the patient~~] unless ordered to do so under Subsection
15 (g).

16 (e-1) If during a previous admission to a facility a
17 patient's attending physician and the review process under
18 Subsection (b) have determined that life-sustaining treatment is
19 inappropriate, and the patient is readmitted to the same facility
20 or another facility in the same health care system within six months
21 from the date of the decision reached during the review process
22 conducted upon the previous admission, Subsections (b) through (e)
23 need not be followed if the patient's attending physician and a
24 consulting physician who was not involved in the patient's care
25 during the previous admission [~~is a member of the ethics or medical~~
26 ~~committee of the facility~~] document in the medical record on the
27 patient's readmission that the patient's condition either has not

1 improved or has deteriorated since the review process was
2 conducted.

3 (f) Life-sustaining treatment under this section may not be
4 entered in the patient's medical record as medically unnecessary
5 treatment until the time period provided under Subsection (e) and
6 Section 166.0465, if applicable, has expired.

7 (g) At the request of the patient or the surrogate [~~person~~
8 ~~responsible for the health care decisions of the patient~~], the
9 appropriate district or county court shall extend the time period
10 provided under Subsection (e) only if the court in a proceeding
11 conducted under Section 166.0465 finds, by a preponderance of the
12 evidence, that there is a reasonable expectation that a physician
13 or health care facility that will honor the patient's directive
14 will be found if the time extension is granted.

15 (h) This section may not be construed to impose an
16 obligation on a facility or a home and community support services
17 agency licensed under Chapter 142 or similar organization that is
18 beyond the scope of the services or resources of the facility or
19 agency. This section does not apply to hospice services provided by
20 a home and community support services agency licensed under Chapter
21 142.

22 SECTION 5. Subchapter B, Chapter 166, Health and Safety
23 Code, is amended by adding Section 166.0465 to read as follows:

24 Sec. 166.0465. COURT ORDER FOR LIFE-SUSTAINING TREATMENT;
25 APPEAL; FILING FEE AND COURT COSTS. (a) A patient or the patient's
26 surrogate may submit a motion for extension of time to effect a
27 patient transfer for relief under Section 166.046(g) in any county

1 court at law, court having probate jurisdiction, or district court,
2 including a family district court and immediately serve a copy on
3 the health care facility.

4 (b) The court shall set a time for a hearing on a motion
5 filed under Subsection (a) and shall keep a record of all testimony
6 and other oral proceedings in the action. The court shall rule on
7 the motion and issue written findings of fact and conclusions of law
8 not later than the fifth business day after the date the application
9 is filed with the court. The time for the hearing and the date by
10 which the court must rule on the motion may be extended by
11 stipulation of the parties, with the approval of the court.

12 (c) Any party may appeal the decision of the court under
13 Subsection (b) to the court of appeals having jurisdiction over
14 civil matters in the county in which the application was filed by
15 filing a notice of appeal with the clerk of the court that ruled on
16 the application not later than the first business day after the day
17 on which the decision of the court was issued.

18 (d) On receipt of a notice of appeal under Subsection (c),
19 the clerk of the court that ruled on the motion shall deliver a copy
20 of the notice of appeal and record on appeal to the clerk of the
21 court of appeals. On receipt of the notice and record, the clerk of
22 the court of appeals shall place the appeal on the docket of the
23 court, and the court of appeals shall promptly issue an expedited
24 briefing schedule and set a time for a hearing.

25 (e) The court of appeals shall rule on an appeal under
26 Subsection (d) not later than the fifth business day after the date
27 the notice of appeal is filed with the court that ruled on the

1 application. The times for the filing of briefs, the hearing, and
2 the date by which the court of appeals must rule on the appeal may be
3 extended by stipulation of the parties, with the approval of the
4 court of appeals.

5 (f) Any party may file a petition for review of the decision
6 of the court of appeals with the clerk of the supreme court not
7 later than the third business day after the day on which the
8 decision of the court of appeals was issued. Other parties may file
9 responses not later than the third business day after the day on
10 which the petition for review was filed. The supreme court shall
11 grant the petition, deny it, refuse it, or dismiss it for want of
12 jurisdiction, whether or not a reply to any response has been filed,
13 not later than the third business day after the day on which the
14 response was due. If the supreme court grants the petition for
15 review, it shall exercise its sound discretion in determining how
16 expeditiously to hear and decide the case.

17 (g) If a motion is filed under Subsection (a),
18 life-sustaining treatment shall be provided through midnight of the
19 day by which a notice of appeal must be filed unless the court
20 directs that it be provided for a longer period. If a notice of
21 appeal under Subsection (c) is filed, life-sustaining treatment
22 shall be provided through midnight of the day by which a petition
23 for review to the supreme court must be filed, unless the court of
24 appeals directs that it be provided for a longer period. If a
25 petition for review to the supreme court is filed under Subsection
26 (f), life-sustaining treatment shall be provided through midnight
27 of the day on which the supreme court denies, refuses, or dismisses

1 the petition or issues a ruling on the merits, unless the supreme
2 court directs that it be provided for a longer period.

3 (h) A filing fee or court cost may not be assessed for any
4 proceeding in a trial or appellate court under this section.

5 SECTION 6. Section 166.052(a), Health and Safety Code, is
6 amended to read as follows:

7 (a) In cases in which the attending physician desires not
8 ~~[refuses]~~ to follow ~~[honor]~~ an advance directive or treatment
9 decision requesting the provision of life-sustaining treatment,
10 the statement required by Section 166.046(b)(1) ~~[166.046(b)(2)(A)]~~
11 shall be in substantially the following form:

12 When There Is A Disagreement About Medical Treatment: The
13 Physician Recommends Against Life-Sustaining Treatment That You
14 Wish To Continue

15 You have been given this information because you have
16 requested life-sustaining treatment on behalf of the patient,*
17 which the attending physician believes is not appropriate. This
18 information is being provided to help you understand state law,
19 your rights, and the resources available to you in such
20 circumstances. It outlines the process for resolving disagreements
21 about treatment among patients, families, and physicians. It is
22 based upon Section 166.046 of the Texas Advance Directives Act,
23 codified in Chapter 166 of the Texas Health and Safety Code.

24 When an attending physician desires not ~~[refuses]~~ to follow
25 ~~[comply with]~~ an advance directive or other request for
26 life-sustaining treatment because of the physician's judgment that
27 the treatment would be inappropriate, the case will be reviewed by

1 an ethics or medical committee. Life-sustaining treatment will be
2 provided through the review.

3 You will receive notification of this review at least 60 [~~48~~]
4 hours before a meeting of the committee related to your case. You
5 are entitled to attend the meeting. With your agreement, the
6 meeting may be held sooner than 60 [~~48~~] hours, if possible.

7 The committee will appoint a patient liaison to assist you
8 through this process. You are entitled to attend the meeting and to
9 be accompanied by one or more persons to support you, subject to the
10 committee's policy and ability to accommodate the persons
11 authorized and wishing to attend. You also are entitled to receive
12 within 24 hours a copy of the patient's medical record of the
13 patient's current admission to the facility. You are entitled to
14 receive a written explanation of the decision reached during the
15 review process.

16 If after this review process both the attending physician and
17 the ethics or medical committee conclude that life-sustaining
18 treatment is inappropriate and yet you continue to request such
19 treatment, then the following procedure will occur:

20 1. The physician, with the help of the health care facility,
21 will assist you in trying to find a physician and facility willing
22 to provide the requested treatment.

23 [~~2. You are being given a list of health care providers and~~
24 ~~referral groups that have volunteered their readiness to consider~~
25 ~~accepting transfer, or to assist in locating a provider willing to~~
26 ~~accept transfer, maintained by the Texas Health Care Information~~
27 ~~Council. You may wish to contact providers or referral groups on~~

1 ~~the list or others of your choice to get help in arranging a~~
2 ~~transfer.]~~

3 2. [~~3.~~] The patient will continue to be given
4 life-sustaining treatment and treatment to enhance pain management
5 and reduce suffering until he or she can be transferred to a willing
6 provider for up to 10 business days from the time you were given the
7 committee's written decision that life-sustaining treatment is not
8 appropriate.

9 3. [~~4.~~] If a transfer can be arranged, the patient will be
10 responsible for the costs of the transfer.

11 4. [~~5.~~] If a provider cannot be found willing to give the
12 requested treatment within 10 business days, life-sustaining
13 treatment may be withdrawn unless a court of law has granted an
14 extension.

15 5. [~~6.~~] You may ask the appropriate district or county court
16 to extend the 10 business-day period if the court finds that there
17 is a reasonable expectation that a physician or health care
18 facility willing to provide life-sustaining treatment will be found
19 if the extension is granted.

20 *"Life-sustaining treatment" means treatment that, based on
21 reasonable medical judgment, sustains the life of a patient and
22 without which the patient will die. The term includes both
23 life-sustaining medications and artificial life support, such as
24 mechanical breathing machines, kidney dialysis treatment, and
25 artificial nutrition and hydration. The term does not include the
26 administration of pain management medication or the performance of
27 a medical procedure considered to be necessary to provide comfort

1 care, or any other medical care provided to alleviate a patient's
2 pain.

3 SECTION 7. Subchapter B, Chapter 166, Health and Safety
4 Code, is amended by adding Section 166.054 to read as follows:

5 Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR
6 MEDICAL COMMITTEE PROCESSES OF DATA. (a) On submission of a health
7 care facility's application to renew its license, a facility in
8 which one or more meetings of an ethics or medical committee is held
9 under Section 166.046 shall file a report with the department that
10 contains aggregate information regarding the number of cases
11 considered by an ethics or medical committee and the disposition of
12 those cases by the facility.

13 (b) The report required by this section may not contain any
14 data specific to an individual patient.

15 SECTION 8. Sections 166.082(a) and (c), Health and Safety
16 Code, are amended to read as follows:

17 (a) A competent adult [~~person~~] may at any time execute a
18 written out-of-hospital DNR order directing health care
19 professionals acting in an out-of-hospital setting to withhold
20 cardiopulmonary resuscitation and certain other life-sustaining
21 treatment designated by the board.

22 (c) If the person is incompetent but previously executed or
23 issued a directive to physicians in accordance with Subchapter B
24 requesting that all treatment, other than treatment necessary for
25 keeping the person comfortable, be discontinued or withheld, the
26 physician may rely on the directive as the person's instructions to
27 issue an out-of-hospital DNR order and shall place a copy of the

1 directive in the person's medical record. The physician shall sign
2 the order in lieu of the person signing under Subsection (b).

3 SECTION 9. Section 166.152(d), Health and Safety Code, is
4 amended to read as follows:

5 (d) The principal's attending physician shall make
6 reasonable efforts to inform the principal of any proposed
7 treatment or of any proposal to withdraw or withhold treatment
8 before implementing an agent's health care decision [~~advance~~
9 ~~directive~~].

10 SECTION 10. Chapter 166, Health and Safety Code, is amended
11 by adding Subchapter E to read as follows:

12 SUBCHAPTER E. ADVANCE DIRECTIVE REGISTRY

13 Sec. 166.201. ADVANCE DIRECTIVE REGISTRY. (a) The
14 department shall establish and maintain an advance directive
15 registry that is accessible through an Internet website.

16 (b) The registry must be used to store advance directives
17 made under this chapter that are filed with the department.

18 (c) The department shall ensure that the registry is
19 maintained in a secure database that is designed to provide
20 authorized health care providers with immediate access to the
21 registry at all times but prevent unauthorized access to the
22 registry.

23 Sec. 166.202. CONTRACT WITH PRIVATE ENTITY. The department
24 may contract with a public or private entity to develop and maintain
25 the advance directive registry.

26 Sec. 166.203. FEES. The department may not charge a fee to:

27 (1) register an advance directive in the registry; or

1 (2) access an advance directive maintained in the
2 registry.

3 Sec. 166.204. EVIDENCE OF REGISTRATION. The department
4 shall provide a method by which a notation indicating that an
5 individual has an advance directive registered with the department
6 may be placed on the individual's driver's license or
7 identification card.

8 Sec. 166.205. REMOVAL FROM REGISTRY. If the department
9 receives notice that an advance directive that is contained in the
10 registry has been revoked or that the individual who is the subject
11 of an advance directive contained in the registry is deceased, the
12 department shall remove the advance directive from the registry.

13 Sec. 166.206. REGISTRATION NOT REQUIRED. (a) Failure to
14 file an advance directive with the registry does not affect the
15 validity of the advance directive.

16 (b) Failure to notify the department of a revocation of an
17 advance directive does not affect the validity of the revocation.

18 Sec. 166.207. CONFIDENTIALITY. Information obtained by the
19 department for the advance directive registry is confidential and
20 may be disclosed only with the written consent of the declarant of
21 the advanced directive or a person authorized to make health care
22 decisions on the declarant's behalf.

23 Sec. 166.208. GIFTS AND GRANTS. The department may accept
24 gifts, grants, donations, bequests, and other forms of voluntary
25 contributions to support, promote, and maintain the advance
26 directive registry.

27 Sec. 166.209. RULES. (a) The executive commissioner of the

1 Health and Human Services Commission shall adopt rules to implement
2 the creation and maintenance of the advance directive registry,
3 including rules to:

4 (1) protect the confidentiality of individuals in
5 accordance with Section 159.002, Occupations Code;

6 (2) inform the public about the registry;

7 (3) require the written consent of the declarant of
8 the advance directive or a person authorized to make health care
9 decisions on the declarant's behalf before any information relating
10 to the declarant is included in the registry; and

11 (4) ensure the authenticity of an advance directive
12 submitted to the department for inclusion in the advance directive
13 registry.

14 (b) The rules governing use or disclosure of information in
15 the registry must be at least as stringent as the Health Insurance
16 Portability and Accountability Act and Privacy Standards, as
17 defined by Section 181.001.

18 SECTION 11. Subchapter D, Chapter 166, Health and Safety
19 Code, is amended by adding Section 166.1641 to read as follows:

20 Sec. 166.1641. AUTHORITY OF AN AGENT PRIOR TO A COMPETENCY
21 DETERMINATION. To ensure appropriate access to medical and health
22 information under the federal Health Insurance Portability and
23 Accountability Act of 1996 and its accompanying regulations, prior
24 to a determination of competency under Health & Safety Code
25 166.152, the person named as an agent in the Medical Power of
26 Attorney is a personal representative for the purpose of reviewing
27 and/or determining the patient's competency.

1 SECTION 12. (a) Not later than November 1, 2007, the Texas
2 Supreme Court shall issue the rules and prescribe the forms
3 necessary for the process established by Section 166.0465, Health
4 and Safety Code, as added by this Act. The rules shall prescribe
5 the method of service of the application under Section 166.0465 and
6 may require filing and service of notices, petitions, and briefs
7 electronically to the extent the Supreme Court considers
8 appropriate.

9 (b) Not later than March 1, 2008, the executive commissioner
10 of the Health and Human Services Commission shall adopt the rules
11 necessary to implement the changes in law made by this Act to
12 Chapter 166, Health and Safety Code.

13 SECTION 13. An advance directive form executed under
14 Chapter 166, Health and Safety Code, before the effective date of
15 this Act is valid and shall be honored as if the form were executed
16 on or after the effective date of this Act. If an attending
17 physician refuses to honor a patient's advance directive or a
18 health care or treatment decision made by or on behalf of a patient
19 under an advance directive form executed before the effective date
20 of this Act, the refusal is governed by Chapter 166, Health and
21 Safety Code, as amended by this Act.

22 SECTION 14. This Act takes effect September 1, 2007.